

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 756 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

INDIAN POTASH LTD

Versus

GUJARAT FERTILIZERS

Appearance:

Mr. A. Mohapatra with Mr. P.S. Godiawala
for NANAVATI & NANAVATI for Petitioner
MR SK JHAVERI for Respondent No. 1

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 21/06/2001

ORAL JUDGEMENT

1. The appellant-original plaintiff, by filing this appeal, has challenged the judgment and decree dated November 30, 1979 passed by the learned Judge, Court No.13, City Civil Court, in Summary Suit No.838 of 1976,

dismissing the suit filed by the appellant.

2. The appellant is a Company registered under the Indian Companies Act, 1956 having its Registered Office at Madras. The respondent is a partnership firm carrying on business at Ahmedabad. According to the appellant, Muriate of Potash is a chemical which is imported and its import is controlled by the Government of India which also fixes the price of that commodity. By sale note dated April 22, 1974, the appellant-company agreed to sell and the respondent agreed to purchase and take delivery, Ex-Jetty Kandla, of 100 tonnes of Muriate of Potash consisting of 2000 bags for a price of Rs.630/per tonne. It was also pleaded in the suit that, as per the contract arrived at between the parties, if the price is revised by the Government of India, then the price ruling on the date of the delivery or despatch will be applicable. According to the appellant, the respondent had taken delivery of 1810 bags weighing 90.5 tonnes on 1st June 1974 and 2nd June 1974. The Government of India, however, revised the price of Muriate of Potash to Rs.1,180/- with effect from June 1, 1974. Therefore, according to the appellant, the respondent became liable to pay additional amount of Rs.52,223.71 ps. Accordingly, the appellant sent to the respondent a supplementary bill dated November 26, 1974 for the said amount. However, the respondent denied its liability to pay the said amount and contended that they had already made advance payment of Rs.64,250/- on April 10, 1974. The Zonal Manager of the Bombay Branch of the appellant-company again wrote to the respondent calling upon them to pay the amount of Rs.52,223.71 ps under the bill dated November 26, 1974 and reiterated that the delivery of the goods was made during June 1974 and not on May 31, 1974 and, therefore, the new rates were applicable. The appellant also called upon the respondent to refer the dispute to arbitration by Madras Chamber of Commerce and Industries in accordance with the arbitration agreement contained in the sale note dated April 22, 1974. By reply dated October 1, 1974, the respondent denied the allegations made by the appellant in their notice and refused to refer the dispute to arbitration saying that the arbitration clause did not apply to the dispute. The appellant had, therefore, filed the above-numbered suit in the City Civil Court, Ahmedabad, for the amount of supplementary bill and interest at the rate of 12% per annum from November 26, 1974 till February 9, 1976.

3. The suit was resisted by the respondent by filing its written statement at Exh.13, inter alia, contending

that the respondent had never agreed to pay price revised by the Government of India or to pay the ruling price on the date of delivery of 90.50 tonnes of the goods on June 2, 1974. It was averred that the respondent was never informed by the appellant on June 1, 1974 regarding the revision of the price of the goods by the Government of India with effect from 1st and 2nd June 1974. It was further averred that there was no written agreement to pay as per the price revised or ruling on the date of delivery or despatch. It was contended that the delivery of goods was, in fact, taken on or before May 31, 1974 and not on 1st or 2nd June 1974. The respondents further contended that the documents given by the appellant to the respondent show that the delivery was made on May 31, 1974. It was further contended that the respondent had paid the full price in advance and the delivery was also taken by the respondent before intimation of the price rise. Therefore, the appellant was not entitled to claim the effect of revised rate and the suit of the appellant be dismissed.

4. The learned Judge, on the basis of rival pleadings of the parties, framed issues at Exh.16. The plaintiff-appellant, in support of its case, examined its power of attorney holder, Rashmikant Natwarlal Shah at Exh.36 and Assistant Manager of Cargo Movers, Gandhidham, Shri Murlidhar Sridhar Tavde Exh.40. On behalf of the respondent, its partner Yogeshbhai Indubhai Amin was examined at Exh.53. The appellants and the respondent produced documentary evidence, reference to which shall be made as and when necessary during the course of the judgment.

5. I have heard Mr. A. Mohapatra with Mr. P.S. Godiawala for M/s. Nanavati & Nanavati for the appellant and Mr. S.K. Zaveri for the respondent. The learned advocates for the respective parties have taken me through the entire record and proceedings.

6. It is contended by the learned advocate for the appellant that it was agreed between the parties that the respondent was liable to pay price of Muriate of Potash as per the price fixed by the Government of India as it was an 'import commodity'. It was contended that, before the goods were delivered, the Government of India had revised the price from Rs.630 to Rs.1180 per tonne. The submission of the learned advocate for the appellant is devoid of any merit. The talk between the representative of the appellant-Company and the partner of the respondent, Mr. Yogeshbhai, took place on March 19, 1974, wherein, it was agreed that the respondent will

purchase 100 tonnes of Muriate of Potash. Accordingly, the respondent had paid Rs.20,000 by cheque. Further amount of Rs.44,250/- was also paid by the respondent to the representative of the appellant-company on March 22, 1974. Accordingly, the order was booked by the appellant's representative Mr. Bhatt in the order book of the plaintiff for 100 tonnes of Muriate of Potash and, at that time, the respondent was told by Mr. Bhatt that the goods were lying at Kandla Port Trust and the respondent shall take delivery of the goods as soon as it receives the sale note from the Bombay Office. The sale note Exh 22 was received by the respondent from the appellant in the first week of May 1974. It is an admitted position that the full value of 100 tonnes of Muriate Potash which was ordered by the respondent was recovered by the appellant by two cheques on March 19, 1974 and March 29, 1974. The order of the said quantity was booked on March 26, 1974 and, thereafter, the sale note was sent to the defendants by the appellant's Bombay Office in the first week of May 1974. The buyers copy of the sale note which was received by the respondent is at Exh.72. It is pertinent to note that the head office copy of sale note Exh.22 contains more conditions than those in the buyer's copy of sale note Exh.72. At the trial, it was established that out of 100 tonnes of Muriate of Potash, 90.5 tonnes of Muriate of Potash was delivered to the respondent on April 22, 1974. Thus, the fact of supply of 90.5 tonnes of Muriate of Potash was proved by the evidence of Mr. Tavde who was at the relevant time working as Manager of M/s. Cargo Movers at Gandhidham. As per the provision of Section 34 of the Sales of Goods Act, 1930 ('Act' for short, a delivery of part of the goods, in progress of the delivery of the whole of the goods, has the same effect, for purpose of passing the property in the goods as a delivery of the whole but a delivery of part of the goods with an intention of serving it from the whole, does not operate as a delivery of the remainder. It is clearly borne out from the fact that the appellant sent the buyer's copy of the sale note Exh.72 to the respondent and, from the endorsement made by M/s. Cargo Movers at Gandhidham, the appellant's clearing agents were to hand over the entire goods to the respondent's representative Shri H.I. Amin. Thus, it become clear that at the time of sending the buyers copy of the sale note Exh.72, the entire quantity of 100 tonnes of the goods was in deliverable state and the appellant had done everything at its end to effect delivery of the goods to the respondent. Even the evidence of witness, Rashmikan N. Shah, who was examined by the appellant at Exh.36, revealed that the goods mentioned in the sale note Exh.72 were separately

earmarked and care was taken to see that the goods covered in the sale note are not sold away to any one else. From the evidence, it is borne out that when the part delivery had taken place on May 22, 1974, the entire quantity of the goods was, in view of the provision of Section 34 of the Act, delivered to the respondent and only the removal of the entire quantity of the goods was not done on that day because sufficient number of trucks were not available on that day. The fact that sufficient number of trucks was not available is amply borne out from the evidence of the respondent's witness, Yogeshbhai Amin, Exh.53, who is a partner of the firm. There was no cross examination by the appellant to the evidence of Mr. Yogeshbhai Amin that because of insufficiency quantity of number of trucks, the goods cannot be delivered on May 22, 1974. Even the plaintiff's witness, Murlidhar, Exh.40, has admitted in his deposition in paragraph 4 that, practically every day there was scarcity of trucks at Kandla Port. Thus, in view of the provision of Section 34 of the Act, even part delivery of the goods will amount to full delivery of the goods.

7. It is also pertinent to note that the appellant has based its claim of supplementary bill on the strength of sale note Exh.22, which was a seller's copy. The buyer's copy of sale note was produced at Exh.72 which was sent to the respondent, on the basis of which, actual delivery was taken. It was not mentioned that the agreed price of Rs.630/- per tonne of Muriate Potash was subject such subsequent revision. When no condition was stated in the buyers copy of sale note Exh.72, it was not open to the appellant to claim on the basis of seller's copy of sale note Exh.72. The oral evidence of witness, Rashmikant N. Shah, Exh.36, who was examined on behalf of the appellant, cannot throw any light on the inconsistency between two sale notes. He merely deposed that he has no knowledge of suit transaction. In view of the above inconsistency, the learned trial Judge has rightly observed that there was no reliable evidence to show that the respondent had, in fact, agreed to pay the price revised by the Government of India. The conclusion of the learned trial Judge that the appellant had failed to prove that the respondent had agreed to pay the price revised by the Government of India on the date of delivery or despatch in respect of the goods, in my view, is eminently just and proper and does not call for any interference. The learned Judge has not committed any error or illegality in dismissing the suit filed by the appellant for recovery of Rs.57,096.26 ps on the basis of supplementary bill.

8. For the foregoing reasons, the appeal fails and is dismissed with no order as to costs.

June 21, 2001 (M.H.Kadri, J.)
(swamy)
